

Rule Overview

The Centers for Medicare and Medicaid Services (CMS) issued a final rule, effective March 17, 2014, which sets new requirements for states offering home and community-based long term services and supports. The new rule defines requirements for the person-centered planning process; person-centered service plan; review of the person-centered service plan; the qualities of home and community-based settings; assurances of compliance with the requirements; and transition plans to achieve compliance with the requirements. The rule also identifies settings that are not home and community-based (42 CFR §441.301).

Each state that operates a Home and Community-Based Service (HCBS) waiver under 1915(c), or a State Plan under 1915(i), of the Social Security Act that was in effect on or before March 17, 2014, is required to file a Statewide Transition Plan, hereinafter referred to as the Statewide Settings Transition Plan. The Statewide Settings Transition Plan must be filed within 120 days of the first 1915(c) waiver renewal or 1915(i) State Plan Amendment (SPA) that is submitted to CMS after the effective date of the rule (March 17, 2014), but not later than March 17, 2015. The Statewide Settings Transition Plan must either provide assurances of compliance with 42 CFR §441.301 or set forth the actions that the State will take to bring each 1915(c) HCBS waiver and 1915(i) State Plan into compliance by March 17, 2019, and detail how the State will continue to operate all 1915(c) HCBS waivers and 1915(i) State Plans in accordance with the new requirements.

What does the new Rule Means

As indicated in the informational summary that accompanied Montana's statewide HCBS transition plan, the overarching theme of the rule is: "The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS."

The rule also requires that the setting:

- Is selected by the individual from options that include non-disability specific settings and options for private units. Individuals must also have choice regarding the services they receive and by whom the services are provided.
- Ensures the individual right of privacy, dignity and respect, and freedom from coercion and restraint.
- Optimizes independence and autonomy in making life choices without regimenting such things as daily activities, physical environment, and with whom the individual interacts.

When a residential setting is owned or controlled by a service provider, additional requirements must be met:

- At a minimum, the individual has the same responsibilities and protections from eviction that tenants have under state or local landlord/tenant laws; or when such laws do not apply, a lease, or other written residency agreement must be in place for each HCBS participant to provide protections that address eviction processes and appeals comparable to the applicable landlord/tenant laws.
- Each individual has privacy in their sleeping or living unit. This includes having entrance doors which can be locked by the individual with only appropriate staff having keys; individuals having a choice of roommates in shared living arrangements; and having the freedom to furnish and decorate their own sleeping or living areas.
- Individuals have the freedom and support to control their own schedules and activities, including having access to food and having visitors of their choosing.

These requirements may only be modified when an individual has a specific assessed need that justifies deviation from a requirement. In such cases, the need must be supported in the HCBS person-centered service plan.

The Department of Public Health and Human Services (DPHHS) submitted Montana's statewide transition plan to CMS on December 12, 2014. Montana's transition plan addresses the areas of public input, assessment, remediation, and program administration.. DPHHS will partner with Medicaid members, providers and provider associations, advocates and other stakeholders throughout this process to allow for input into the process and to assure that members and providers have access to needed information to assist with transition activities. The final outcome will be that Medicaid members will be served in a manner that will enable them to live and thrive in integrated community settings.

As required by CMS, Montana is submitting a transition plan specific to its 1915(c) Behavioral Health Severe and Disabling Mental Illness (SDMI) Home and Community Based Waiver.

Public Input

A public meeting was held to discuss the SDMI Waiver renewal and the transition plan on February 26, 2015 from 9:00 am to 10:30 am, at the Sanders Auditorium, 111 N. Sanders Avenue, Helena, Montana. The public meeting could also be accessed by webinar at <https://hhsmt.webex.com/hhsmt> and a toll free number.

The renewal application and transition plan were made available for review February 17, 2015, at <http://dphhs.mt.gov/amdd/Mentalhealthservices>. A public comment form was included on this website to offer the public another convenient way to comment. The State, upon request, made hard copies available of the renewal application including the transition plan. Public comment was received from February 21 through March 24, 2015. Public comments will be summarized and addressed later in this document.

Tribal consultation letters were mailed February 18, 2015. A memo went out electronically to the medical advisory committee, the Montana Medicaid Health Coalition, and their interested parties on February 18, 2015. A memo was also emailed to the Mental Health Oversight Advisory Council, Local Advisory Councils, Service Area Authorities, Mental Health Centers, HCBS Case Management Teams, Advocates, and mailed current waiver members on February 20, 2015. Public notice was placed in three of the State's major daily newspapers on February 15, 2015.

Assessment

States are required to review and analyze all settings in which Medicaid HCBS are delivered and settings in which individuals receiving Medicaid HCBS services reside, and to report the results to CMS. Montana is planning a multi-faceted approach to assessment. This began with a high-level assessment of the types of settings where HCBS are provided. This stage did not identify specific providers or locations, but identified general categories of settings that are likely to be in compliance, and settings that are not yet, but could become compliant. (See Attached Chart with High Level Settings Analysis)

In addition to assessing State standards, requirements and practices, DPHHS must also assess compliance at the provider and, in particular, at the individual provider level on an ongoing basis.

Other planned avenues for assessment include:

- Development of a provider self-assessment tool to compile baseline HCBS compliance information
- State analysis of provider self-assessments and on-site reviews to evaluate for validity and determine compliance;
- Development of a member assessment tool to compile setting satisfaction information and incorporation of this survey/assessment tool into ongoing quality assurance review processes;
- Development of a tool to standardize and incorporate assessment of settings into the HCBS quality assurance onsite review process.

The tools developed will address questions recommended by CMS as part of the assessment process and, as such, are based on the nature and quality of the experience of individuals supported by that agency/facility. Each of these assessments will help determine which programs/settings are in compliance and which ones need some changes to come into compliance. As the assessment process is completed for a setting, DPHHS will notify the provider of the results.

The provider self-assessment tool will be made available to providers, stakeholders, advocates, beneficiaries of waiver services, and interested parties for review and comments as part of the ongoing public notice process. Because all DPHHS waivers share many of the same providers, the SDMI Waiver provider self-assessment process will be done in collaboration with the other department waiver staff.

DPHHS may also assess individual settings/types of settings to further document compliance.

The Department has not made a decision on the process to be used to conduct specific site evaluations.

The Department will be developing a member experience survey that will be distributed to members, stakeholders, advocates, providers and interested parties for review and comments in the ongoing public notice process. The member survey will have the similar questions recommended by CMS for their perspective of the settings.

Remediation

DPHHS will take a series of steps to guide providers in making the transition to full compliance with HCBS settings, such as informational letters, updates to the Administrative Rules of Montana and provider manuals, and other targeted communications.

For settings that are found not to be in compliance, the provider will be required to submit a corrective action plan to DPHHS that describes the steps to be taken and expected timelines to achieve compliance. Consideration of corrective action plans by the State will take into account the scope of the transition to be achieved and the unique circumstances related to the setting in question.

In order to continue to receive federal Medicaid funds for waiver services, Montana must comply with the “settings” requirements. If a provider is unable or unwilling to remediate a setting, it may be necessary to transition an individual to a compliant setting. In any instance where an individual would need to move to an alternate setting, the individual will be given timely notice and afforded a choice of alternative providers through the person-centered planning process.

Program Administration

DPHHS is assessing to what extent its rules, standards, policies, licensing requirements and other provider requirements ensure settings comport with the HCBS settings requirements. In addition, DPHHS assesses and describes the Department oversight process to ensure ongoing compliance.

Upon conducting the compliance assessment, if the Department determines that existing standards meet the federal settings requirements and the State's oversight process is adequate to ensure ongoing compliance, the State will describe the process that it used for conducting the compliance assessment and the outcomes of that assessment.

However, if the State determines that its standards may not meet the federal settings requirements, the State will include the following in its Statewide Settings Transition

Plan: (1) remedial action(s) to come into compliance, such as proposing new state regulations or revising existing ones, revising provider requirements, or conducting statewide provider training on the new state standards; (2) a timeframe for completing these actions; and (3) an estimate of the number of settings that likely do not meet the federal settings requirements.